

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20556**

In the Matter of)	
)	
Disclosure of Customer Information)	RM – 10715
In 9-1-1 Emergencies)	

REPLY COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits its reply comments in the above-captioned proceeding, in which the Commission seeks to determine whether to initiate a rulemaking proceeding to examine the “legal preconditions to release of customer-specific information to Public Safety Answering Points (“PSAPs”) in the course of response to 9-1-1 emergency calls.”¹ The Petition raised issues governed by federal statutes within the purview of the Department of Justice (“DOJ”). While the Petition also queries whether Section 222 of the Communications Act could be interpreted in a more liberal manner, much of the Petition implicates issues beyond the scope of the FCC’s authority. Specifically, the Petition seeks an interpretation of the Electronic Communications Privacy Act (“ECPA”),² a federal criminal statute, which would alter carriers’ obligations.³ Verizon Wireless agrees with the comments stating that the FCC should seek guidance from the DOJ.⁴

¹ *Release of Customer Information During 9-1-1 Emergencies*, Petition for Rulemaking, RM-10715 (filed May 2, 2003) at 7 (“Petition”).

² 18 U.S.C. § 2701 *et seq.*

³ For example, the Petition queries whether the implied consent interpretation of 18 U.S.C. § 2703(c) given by the DOJ could be used to overcome the restrictions contained in Sections 2702 (b) and (c). *See* Petition at 9.

⁴ *See* Comments filed August 15, 2003 by Sprint at 5-8, CTIA at 2,11.

I. FEDERAL LAW ESTABLISHES A DELICATE BALANCE BETWEEN PROTECTING PRIVACY AND DISCLOSURE OF INFORMATION TO GOVERNMENT ENTITIES

A. Carriers Are Not Required to Disclose Customer Communications or Records To Government Entities Absent Legal Authorization

As two comments aptly note, ECPA generally prohibits government entities from requiring carriers to divulge customer information except as provided in limited circumstances usually involving legal authorization.⁵ Section 2703 establishes those limited circumstances under which carriers are *required* to disclose customer communications or records and establishes the legal requirements for such government access. Sections 2703(a) and (b) govern the provision of the contents of wire or electronic communications and usually require a warrant, or at a minimum, when notice is given to the customer, an administrative subpoena or court order.⁶ Section 2703(c)(1)(B) governs the provision of subscriber records and states that a carrier shall disclose a record or other information regarding one of its customers (not including the contents of communications) to a governmental entity only when that entity obtains a warrant, a court order, the consent of the customer, and on one other occasion that is not pertinent here.⁷

⁵ Comments by Sprint at 5, CTIA at 3.

⁶ 18 U.S.C. § 2703(a), (b).

⁷ 18 U.S.C. § 2703 (c)(1)(B). This section also permits disclosure in a particular circumstance when a governmental entity, “submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title).” 18 U.S.C. § 2703(c)(1)(D).

B. Carriers' Voluntary Disclosure of Customer Information is Also Circumscribed

The USA Patriot Act of 2001 ("USA Patriot Act")⁸ and the Homeland Security Act of 2002 ("HSA")⁹ have amended the provisions of the ECPA governing *voluntary* disclosure of customer communications or records. Section 2702 now contains an exception for disclosure of customer records that permits providers to disclose such information to a governmental entity under certain circumstances.¹⁰ Those circumstances are: (1) reasonable belief by a provider, (2) that an emergency involving immediate danger of death or serious physical injury, (3) to any person, (4) justifies disclosure of the information.¹¹ Verizon Wireless has implemented policies responsive to this statutory provision by establishing a specialized group, which is staffed 24 hours a day, 7 days a week, within its legal department to handle all such requests from government agencies, including mandatory requests.

With respect to exigent requests that are not accompanied by a court order, subpoena, or other legal directive, Verizon Wireless requires certification from the PSAP to achieve a reasonable belief that an emergency situation involving immediate danger or death or serious physical injury exists. This is normally accomplished by submission of a request for information to Verizon Wireless in writing, on the PSAP's letterhead, and certifying the stated emergency.¹² In the vast majority of cases, Verizon Wireless does not second-guess the PSAP's certification that an emergency exists, but Verizon

⁸ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L.No. 107-56 (2001).

⁹ Homeland Security Act of 2002, Pub. L. No. 107-296 (2002).

¹⁰ 18 U.S.C.A. § 2702 (c)(4).

¹¹ *Id.*

¹² In rare exigent circumstances where a written request and certification is not immediately possible, Verizon Wireless does validate the request through other means and follows-up to ensure receipt of a written certification after the emergency has passed.

Wireless's policy ensures the consistency and integrity of its internal procedures for providing information to legitimate emergency services personnel and insulates it from hoaxes. This procedure is necessary to balance the needs of government in an emergency with legitimate privacy interests and is consistent with the statute. CTIA correctly notes that prior to this amendment to the ECPA, carriers could not disclose any customer information to governmental entities voluntarily. An expansion of the law through a new FCC rule, as proposed in the Petition, would not only circumvent the express limits of Section 2702, but could place carriers in an untenable position *vis a vis* their customers. Barring new legislation, Verizon Wireless agrees with commentators that the FCC lacks authority to reinterpret the ECPA in the manner advocated by public safety.

II. THE COMMISSION SHOULD FIRST SEEK AN OPINION FROM THE DOJ BEFORE FURTHER CONSIDERING THE PETITION

If the Commission has not already done so, it should follow the recommendations of those comments that urge the Commission to seek a formal opinion from the DOJ on these important issues before acting on the Petition. While Verizon Wireless believes the law is clear, the record in this proceeding can best be augmented by a pronouncement from the DOJ that takes into account the amendments to the ECPA and considers the specific new questions and scenarios raised by petitioners. Unless and until the DOJ passes on these important legal questions, the FCC has no support for the position supported by public safety and should deny the petition.

III. CONCLUSION

The FCC should seek a formal opinion from the DOJ or otherwise deny the Petition because it lacks authority to require disclosure of customer information from wireless carriers or otherwise go beyond the plain language of the ECPA.

Respectfully submitted,

VERIZON WIRELESS

By: John T. Scott, III

John T. Scott, III
Vice President and Deputy General
Counsel - Regulatory Law

Lolita D. Forbes
Associate Director Regulatory Matters

1300 I St, N.W., Suite 400 West
Washington, D.C. 20005
(202) 589-3760

Its Attorneys

September 15, 2003